

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
J. L. Brewer Broadcasting of Cleveland, LLC)	File Number EB-02-AT-307
)	
Owner of Unregistered Antenna Structure located at)	NAL/Acct. No.200232480020
35° 28' 12" North Latitude by 85° 02' 15" West)	
Longitude in Dayton, Tennessee)	FRN 0003-7349-10
)	
Chattanooga, Tennessee)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: September 9, 2002

By the Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find that J. L. Brewer Broadcasting of Cleveland, LLC ("Brewer"), owner of the antenna structure located at coordinates 35° 28' 12" North Latitude and 85° 02' 15" West Longitude, in Dayton, Tennessee, willfully violated Section 17.4(a) of the Commission's Rules ("Rules"),¹ by failing to register the antenna structure. We find Brewer apparently liable for forfeiture in the amount of three thousand dollars (\$3,000).

II. BACKGROUND

2. On July 9, 2002, an agent of the FCC Enforcement Bureau's Atlanta Office ("Atlanta Office") inspected the AM broadcast tower of radio station WDNT located at 35° 28' 12" North Latitude and 85° 02' 15" West Longitude, in Dayton, Tennessee. The agent noted that the structure was painted and had lighting, however, the tower was not registered with the Commission.

3. On July 9, 2002, the agent inspected radio station WDNT and verified that the antenna structure was owned by the licensee of WDNT, J. L. Brewer Broadcasting of Cleveland, LLC, and that the structure was not registered with the Commission. The station license for WDNT requires that the antenna structure be painted and lighted since it is over 200 feet tall. The WDNT station inspection was

¹ 47 C.F.R. § 17.4(a).

conducted with the station's chief engineer.

III. DISCUSSION

4. Section 17.4(a) of the Rules provides that, effective July 1, 1996, owners of any existing antenna structures that require notification to the Federal Aviation Administration ("FAA") must register the structure with the Commission. Section 17.4(a)(2) of the Rules provides that, effective July 1, 1998, owners of an antenna structure that had been assigned painting or lighting requirements prior to July 1, 1996, must register the structure with the Commission. Brewer's antenna structure required notification to the FAA because the structure exceeded 200 feet in height.² In addition, the structure had been assigned painting and lighting requirements by the FCC on the WDNT broadcast station license. Therefore, Brewer's antenna structure required Commission registration. Based on the evidence before us, we find that J. L. Brewer Broadcasting of Cleveland, LLC willfully³ violated Section 17.4(a) of the Commission's Rules by failing to register its antenna structure.

5. Pursuant to Section 1.80(b)(4) of the Commission's Rules,⁴ the base forfeiture amount for the violation cited in this *Notice of Apparent Liability* is \$3,000 (failure to file required forms or information). Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"),⁵ requires us to take into account "... the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require." Considering the record as a whole and the statutory factors listed above, this case warrants a forfeiture in the amount of \$3,000.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,⁷ J. L. Brewer Broadcasting of Cleveland, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for willfully violating Section 17.4(a) of the Commission's Rules by failing to register an antenna

² See 47 C.F.R. § 17.7(a).

³ Section 312(f)(1) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

structure that requires notification to the Federal Aviation Administration.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this *Notice of Apparent Liability*, J. L. Brewer Broadcasting of Cleveland, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *Notice of Apparent Liability* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. IT IS FURTHER ORDERED THAT a copy of this *Notice of Apparent Liability* shall be sent by regular mail and Certified Mail Return Receipt Requested to J. L. Brewer Broadcasting of Cleveland, LLC, 1305 Carter Street, Chattanooga, TN 37402.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director
Atlanta Office

⁸ See 47 C.F.R. § 1.1914.